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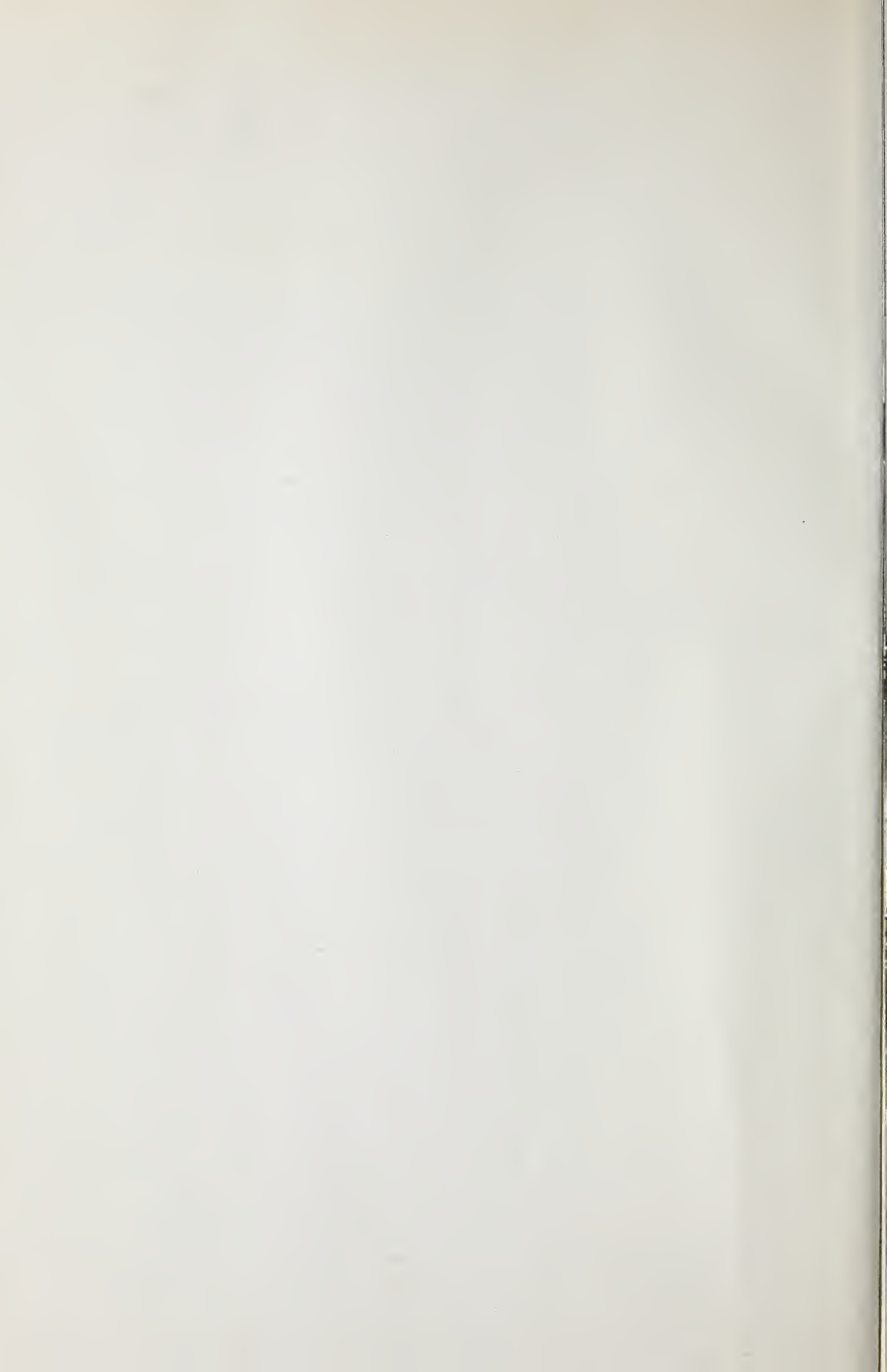


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Mass.  
RECORDS OF MASSACHUSETTS

1st  
UNDER ITS FIRST CHARTER:

A LECTURE

OF A

COURSE BY MEMBERS OF THE MASSACHUSETTS  
HISTORICAL SOCIETY,

Delivered before the Lowell Institute,

JAN. 26, 1869.

BY

CHARLES W. UPHAM.

BOSTON:

PRINTED FOR THE AUTHOR.

1869.



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RECORDS OF MASSACHUSETTS

UNDER ITS

FIRST CHARTER.

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By CHARLES W. UPHAM.

1869

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FOR THE YEAR 1900

AND FINANCIAL STATEMENT

1900

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# RECORDS OF MASSACHUSETTS

UNDER ITS

## FIRST CHARTER.

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THE design of the lecture this evening is to consider the Records of Massachusetts, under its first charter, from the point of view in which they illustrate the formation of a body-politic.

The organization of families and communities into some established order is demanded by the conditions of our nature. More than any other temporal concern, it merits and compels the attention of thoughtful minds; and the questions relating to it have always been acknowledged to rank in the highest department, as subjects of inquiry and meditation. Through the entire range of history, the greatest minds have been turned to it. But a glance at the condition of the nations of the earth shows how unsatisfactory have been the results. The experience of ages has effected little; and the theories of philosophers, not much more. The human race in all lands, and all ages, has groaned under the crushing weight of institutions constructed on false principles. Governments everywhere are upheld by military force; and depend for continuance upon ignorance and superstition. So far as we are an exception, it becomes us to inquire to what we owe the degree of our exemption.

Enlightened views on the subject of government are especially important to a people that governs itself. We can hardly expect to obtain them from treatises and essays, however ingenious and learned. There is, indeed, an inherent obstacle in the way of attaining to the truth by these means. Attempts to reason and speculate concerning it are thwarted by the influence on the



mind of pre-existing usages and ideas. Every suggestion of reform is encountered by the necessity of adapting it to a surrounding state of things, and by well-grounded fear, that, however specious the theory, it may not work well in practice. The elements of motive, sentiment, and association, that actuate mankind, are so infinitely diversified that they cannot be calculated. Casual events, and complicated circumstances, not to be foreseen, may bring to naught the best considered schemes.

On this subject, the world craves and needs, not what theorists have conjectured, or philosophers propounded, but what has been tried, and found sufficient. The question is—Has a fair experiment ever been made, under favorable auspices, of laying the foundation, and building the fabric of a government of men? and, if so, let it be brought before us.

As answering this question, and meeting this demand, I cite the colony of Massachusetts, during its first half-century, as more to the purpose than any other instance in history.

In pursuance of the recommendation of Governor Clifford, in a special message of Feb. 12, 1853, the Legislature of Massachusetts ordered the first and second volumes of the "Records of the Governor and Company of the Massachusetts Bay in New England," to be printed, embracing the proceedings in London prior to the transfer of the patent; and continued after that event, under the style of "Colony Records," to 1649. The next year a resolve was passed, approved by Governor Washburn, February 17, for printing the third, fourth, and fifth volumes, carrying the record to 1686, and covering, altogether, the entire period of the government under the first charter. The form and manner in which they were printed do honor to the Commonwealth, and to the distinguished member of our society, intrusted with the responsible duty of editing them, Nathaniel Bradstreet Shurtleff. The copying was done, under his appointment, by David Pulsifer, whose thorough acquaintance with the chirography of early colonial times gives assurance of exactness.

These volumes supply the most important instruction anywhere to be found, on the formation of a civilized State. They are the text-book on the subject; and stand alone in their character, and the value of their contents, as I proceed to show.



On the 3d of November, 1620, James I. granted by letters-patent all that section of North America, between the fortieth and forty-eighth parallels of latitude, from sea to sea, to the "Council established at Plymouth, in the County of Devon, for the Planting, Ruling, Ordering, and Governing of New England in America."

The Council at Plymouth conveyed by a contract, indented March 14, 1628, so much of the territory, included in their afore-said patent, as was between lines, three miles north of Merrimack River and three miles south of Charles River, running from sea to sea, to Sir Henry Rosewell and Sir John Young, Knights, Thomas Southcott, John Humphries, John Endicott, and Simon Whitcomb, their heirs, assigns, and associates.

One year afterwards, namely, on the 4th of March, 1629, in the fourth year of the reign of Charles I., letters-patent passed the seals, confirming to the above-named six persons, and twenty others, severally named, who had become associated with them, and their heirs, and assigns, "to their only proper and absolute use and behoof forevermore," the territory purchased from the Council at Plymouth. These twenty-six individuals thus came into complete possession, and were owners, so far as the crown of England could give title, of the continent within the limits described. The vocabulary of ordinary language, and of the law, was exhausted in expressing, in every possible iteration and reiteration, the fulness, absoluteness, and perpetuity of the feofment and jurisdiction thus conveyed. In three particulars only was any limitation imposed.

The company was forbidden, in ruling its vast American domain, to make regulations repugnant to the laws of England. But this was merely nominal, as no provision was made, or required to be made, for redress of any wrong done by the company to a planter, or to any outside party. There was, indeed, no way left open, through which the regulations of the company could be brought to adjudication on this point. No political powers, or rights whatever, were given by the patent to the people of the settlement; for the negative protection implied in the language, that no laws should be imposed upon them in conflict with the statutes of the realm, was a mere shadow of a shade, as events proved.

the 25th December, 1917, when a special committee of the American Medical Association was appointed to study the situation in the United States and to report on the same to the American Medical Association at its annual meeting in December, 1918.

The Committee on the American Medical Association was organized on January 1, 1918, and its members were Dr. J. C. Brainerd, Chairman, Dr. J. C. Brainerd, Secretary, Dr. J. C. Brainerd, Treasurer, Dr. J. C. Brainerd, and Dr. J. C. Brainerd. The Committee was organized to study the situation in the United States and to report on the same to the American Medical Association at its annual meeting in December, 1918.

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THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION

The company was required to pay to the crown one-fifth part of all ores of gold or silver found in the country. This amounted to nothing.

There was one other condition, which also, in practice, hardly amounted to any thing. The patent exempted the settlements, to be made by the company, from all duties of any kind, "inward or outward," for seven years; and, after that, for twenty-one years more, with this exception only, that, during the latter period, they were to be subject to a duty of five per cent upon goods shipped from the plantations to any other part of the dominions of England. But this had no sensible effect here, for the duty was to be exacted at the outer end of the voyage, in the port of discharge; and was there imposed upon all alike, foreigners as well as other colonists. Further, it was pledged by the crown, that on the re-exportation, at any time within thirteen months, of goods upon which this duty had been paid, to any country whatever, no further duty of any kind should be levied on them. The whole arrangement was justly to be regarded as the assurance of a privilege rather than the imposition of a burden. No provision was made relating to the subject, on the expiration of the twenty-one years, but the whole matter left, as between the crown and the company; for it must be noticed that there is no reference whatever, in the patent, to the authority, or even the existence, of Parliament, except as implied in the clauses requiring the regulations of the company not to be repugnant to the laws of England. The duty on goods was not in deference to any acts of Parliament, but carefully described, as "according to the ancient trade of merchants." In order that it might be made clear and certain, that the territories embraced in the patent should not be subject to Parliament, but exclusively connected with the personal private property of the crown, the device was adopted, as in the patent to the Council at Plymouth, of repeating over and over again, that they were appendages of the royal demesnes, "to be holden of us, as of our manor of East Greenwich." They were to be regarded as an enlargement of the grounds of one of the favorite residences of the sovereign. While thus protecting them from interference by any other parts of the government, the King bound himself, and his heirs and successors, to the end of time, not to encroach upon,



but, on the contrary, to uphold the administration of the grantees in governing their territory; and enjoined the same upon all exercising authority, civil or military, throughout his dominions.

The persons to whom the patent was issued, were constituted a body-politic. They were to choose, annually, from among themselves, a governor, deputy governor, and eighteen assistants. Any seven or more of the assistants, together with the governor or deputy governor, were to hold a monthly court, for disposing of questions arising from time to time, and requiring immediate attention. There were to be quarterly meetings, held at specified times, by the whole body of the members, or "freemen," as they were called, of the company. These were for making laws or regulations, and the transaction of weighty business. They are spoken of in the patent as "great, general, and solemn assemblies," and termed the "four Great and General Courts" of the company. At the quarterly meeting, occurring in Easter term, that is, in the latter part of May, the annual elections were required to be made.

The King, in the patent, named the persons who were to fill the offices of the company, until the time fixed for an election should arrive. It is remarkable, that, although there were several knights among the grantees, he selected an untitled one for governor. "We do, by these presents, for us, our heirs, and successors, nominate, ordain, make, and constitute our well-beloved Matthew Cradock, the first and present Governor of the said company." Cradock was a London merchant of great wealth, and, as the Records show, of eminent practical ability, energy, and wisdom. He is said to have been connected by family ties, in some way, with Endicott, which accounts, perhaps, for his having been drawn in as an associate of the six original proprietors, and for the deep interest he took in the enterprise. It can hardly be doubted, I think, that he was the same Matthew Cradock, son of a wool merchant in Stafford, who, in the reign of James I., became the owner of the baronial estate in Staffordshire, called Caverswall. The castellated mansion, built as early as the Norman conquest, was reconstructed by him, under the superintendence of Inigo Jones. It is still standing in the form Cradock gave to it, and justly regarded as "one of the most striking, picturesque, and interesting remains of a distant age. A



venerable and "solemn fortress-like structure," it demands special attention, as "presenting the ideal of the great architect of the transition from the ancient castle to the baronial mansion." To an American it has a deeper interest. If its possessor and occupant was the "well-beloved" Matthew Cradock, of the patent, it will appear, as we proceed, that to us that noble mansion will ever be invested with sacred memories and associations. Within its massive walls the thought, perhaps, was conceived which has made Massachusetts and our country what they are to-day. Cradock was returned to Parliament from the city of London, in 1640, and died not long after.<sup>1</sup>

It is important to bear in mind that the patent conferred upon the company, in the most emphatic language, all political power whatever, without any reservation that touched the substance of the grant. This is so vital to the case, as I am presenting it, that the expressions used may be quoted, —

"We do, of our further grace, certain knowledge, and mere motion, give and grant to the said governor or deputy governor, and such of the assistants and freemen of the said company, for the time being, as shall be assembled in any of their General Courts, or in any other courts to be specially summoned and assembled for that purpose, or to the greater part of them, that it shall and may be lawful to and for them, from time to time, to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions, and instructions, not contrary to the laws of this our realm of England, as well for settling of the forms and ceremonies of government and magistracy fit and necessary for the said plantation and the inhabitants there, and for naming and styling of all sorts of officers, both superior and inferior, and setting forth of the several duties, powers, and limits of every such office and place, and for impositions of lawful fines, mulcts, imprisonment, or other lawful correction, and for the directing, ruling, and disposing of all other matters and things."

Some dozen or two knights and gentlemen, more or less, sitting in the parlors of Matthew Cradock, in Swithen's Lane, within the ancient limits of London, by virtue of powers thus granted, held absolute sway over this part of America, from

<sup>1</sup> *Baronial Halls and Ancient Picturesque Edifices of England*, by S. C. Hall, F.S.A. London, 1858. *Proceedings of Essex Institute*, vol. i. p. 242: *Memoir of Cradock*, by David Roberts.



Massachusetts Bay to the Pacific Ocean; and they proceeded to administer their government by transporting settlers forthwith.

Very soon it was found expedient to send some one over to superintend affairs here on the spot, and John Endicott, an original purchaser of the country from the Council at Plymouth, was despatched accordingly. Some months after his departure, the company, on the 30th of April, 1629, elected him "Governor of the Plantation in the Massachusetts Bay," and a commission was duly forwarded to him with the form of an oath of office. This was, however, an arrangement, whereby no power was parted with by the company. It was a limited appointment. Endicott's office was to terminate in one year from the day when he took the oath, and the right was expressly reserved of removing him at any time within the year. His authority was limited by sundry conditions, and reports of all his doings were required to be transmitted to London for approval. He executed his functions with fidelity, energy, and ability. But, notwithstanding all his efforts and those of his employers, the affairs of the company were getting into embarrassment, and its operations threatened with ruin.

Cradock, a thorough business man, appreciated the condition of things. He saw the impending catastrophe; and, being of a bold and courageous spirit, with the comprehensive views of a statesman, proved himself competent to discover and apply the only remedy that could save the enterprise. That which had been fatal to colonial success in other attempts, was the difficulty in the Massachusetts plantation. It was managed by a distant administration. Deliberations and determinations by a body sitting in London could not meet the exigencies of a community, with an ocean between, and the interlapse of months in the transmission of orders and intelligence. Forming a plan by which all concerned might be extricated from the responsibilities in which they were becoming more and more involved, he was so fortunate as to secure the co-operation of parties competent to carry it through. A number of gentlemen of property, character, and influence, were found willing to join the company and assume its burdens, with the understanding that they would personally transport themselves and families to America, and make it their permanent home, provided they were allowed to carry



the patent with them, hold its offices, execute its functions, and possess all its rights and powers. This was Cradock's proposal, and the arrangement was consummated.

John Winthrop, Thomas Dudley, and others, took their seats in the company, at a meeting, Oct. 15, 1629. At a meeting, five days afterwards, Cradock vacated the chair, and Winthrop was elected governor, with a new board of assistants, all to hold office for one year from that date. Early the next spring, he embarked for Massachusetts Bay, with the patent, and the frame and body of the government. Not a vestige of it was left in England.

There were undoubtedly great and daring irregularities in these proceedings, which could not have escaped notice, and would have been summarily arrested, had there been the slightest suspicion of their ultimate consequences. There is no pretence of authority in the patent for the removal of the company out of the realm, or for the relinquishment of his office by Cradock, in the time and manner. His stepping out of the chair, on the 20th of October, without even going through the ceremony of a resignation, and the election of Winthrop to serve an annual term, when by the patent he could only fill out an unexpired term, were equally without justification. Indeed, no provision is made in that instrument for the resignation of any office, and it is a procedure inadmissible by English usage. The transfer of the company to America brought with it another violation of the patent, inasmuch as they were on the passage across the Atlantic at the date fixed in express terms for the annual election, which was pretermitted in consequence altogether. These departures from and violations of the implied meaning and explicit requirements of the patent were necessities involved in the operation of the transference of it from England to America. Those engaged in it, faced the responsibilities of the occasion without shrinking. No stricture, or comment of any kind, appeared from any quarter; and the thing was done.

From the Records, Matthew Cradock alone appears as the originator and manager of this business; but from the nature of the whole proceeding, it is evident that Winthrop shared with him, as a principal co-actor. Let them each have the glory of



the transaction. It is a glory that will become brighter through all time. History sheds no purer lustre upon any names than belongs to the men whose wisdom and statesmanship led to the bold and decisive step that enabled the colony of Massachusetts to bear its great part in teaching how a republic can be built up on a solid and permanent foundation.

The patent of Charles I. to the Massachusetts colony is what is called our First Charter; and, from this point, I shall speak of it under that appellation.

When Winthrop's fleet came to anchor in the harbor of Salem, he, and such members of the company as had accompanied or preceded him, found themselves in absolute and uncontrolled possession of the country, within the limits of their charter. Their jurisdiction and powers were complete; and had they been actuated by selfish motives, or a low ambition, and retained the character of a close corporation, the fortunes of the plantation, and their own fame, would have had the same fate, that of a brief duration and an ignoble end.

The charter gave to them, in express and repeated terms and without limitation, the right to admit new associates. Persons thus admitted became full partners and equal members of the company, called, as has been stated, Freemen. The exercise of this right was the magic by which they converted what was originally a royal act of incorporation for business and commercial purposes, into the constitution of a free and noble Commonwealth. In the year 1631, one hundred and twenty-six of the resident population were admitted, and in the next ten years twelve hundred more.

By this generous and enlightened policy, the PEOPLE here acceded to the rights and powers given in the charter. The Colony of Massachusetts became an independent State. Parliament could not touch it, and the crown had bound itself to keep its hands off.

The result of the proceedings thus far may be restated, at this point, in a few words: The charter gave to the Massachusetts Company sovereignty over its territory. The admission of the people of the plantation into the company gave that sovereignty to them. Having the charter in their possession, and rightfully holding under it, they claimed and exercised absolute self-government.



One hundred and forty-six years before the Declaration of the Independence of the United States, this was an independent government, and continued so for more than half a century, — more independent, in fact, than it has ever been since. Between the period of the First Charter and the war of the Revolution, it was a dependent province, its governors appointed by the British monarch, and the royal assent needed to give validity to its laws. Since the opening of the Revolutionary conflict, to this hour, it has been, in many respects and to a considerable extent, subject to the old Congress of the Confederation, and subsequently to the Government of the United States. But during the fifty-eight years of the First Charter, the people were as free to rule themselves as if they had been on another planet. They chose all their own officers, asked no approval of their laws, suffered no appeal in any case to the mother country, and bowed to no tribunals but of their own erection. This was, and ought to be considered, the first era of American independence.

In this respect, that is, in exemption from foreign interference, the situation of the original colonists of Massachusetts was all that could be desired; in other respects it was equally favorable. All the requisite conditions for the formation of a good government existed. A country lay before them, unoccupied, open, and free; sufficiently large to give room for the experiment, and comprising features and resources adapted to the uses of an industrious and intelligent people, with only here and there a solitary previous settler, or remnants of Aboriginal tribes in no way fastened to the soil. They had among them many persons of large experience in affairs, conversant with the laws and customs, not only of their own native country, but of the nations of Continental Europe, and well read in ancient history. Some of them had held eminent social position, and were of enlarged culture; and not a few, having enjoyed the advantages of the highest schools and seats of academic learning, and of Inns of Court, were remarkably qualified to act the part of statesmen. There probably was a greater amount of practical wisdom and energy among them than in any community, of equal numbers, ever brought together. What they had endured in the old country, and the sacrifices they had encountered in getting away from it, and in opening their wilderness homes, had given them an indi-



vidual force and independence of character, and liberated their minds from the influence of all sentimental associations and traditional attachments to the usages, institutions, and social fixtures of all kinds in the old country.

An opportunity was thus given to solve the problem of government; to ascertain and determine the true method of forming a political organization in accordance with nature, reason, justice, and right, not to be paralleled elsewhere in the old or new world.

The colony of Plymouth, although dating ten years earlier than Massachusetts and extending its distinct history to the close of the era of our First Charter, cannot, in some respects, be regarded as standing on the same level. Its territory was not large enough to form the basis of a State, developed to its full dimensions and ramifications. Until after the process of political organization was under way here, the older colony could hardly give its attention to any thing else than the struggles required to extricate itself from financial entanglements with parties in England. It was long before they could feel that the houses they had built, and the lands they had cleared, were their own. The infant community springing from Plymouth rock demands, however, the sympathy, veneration, and imitation of the friends of freedom and virtue.

Before landing, on the 11th of November, 1620, the Pilgrims executed a written instrument, known as "The Compact," covenanting and combining themselves together "into a civil body politick," subscribed by forty-one persons. Among the names are those of several who were servants, some who were sailors, and one, at least, who could have had no pretensions to consideration on the ground of personal merit, for he is spoken of by Bradford as having been "shuffled into their company." From the first, he appears to have incurred censure for his "mis-carriages." In 1621, he was tied together "neck and heels" for contempt of authority and "opprobrious speeches," and in 1630, hanged for murder.

In view of these facts we must consider the compact, drawn up in the cabin of the "Mayflower," as an instance of universal suffrage, announcing the cardinal principle of a government resting upon the whole people, and deriving its authority from the



voices of all descriptions of persons, without distinction of rank, condition, or character, with a comprehensiveness which Massachusetts was long in reaching, and to which the United States could only have been brought by passing through the Red Sea of our recent intestine war.

The public documents and records of the colony of Plymouth have justly been regarded as among the chief historical treasures of the Commonwealth in which it was merged. In 1836, a resolve of the Massachusetts Legislature was approved by Governor Everett for the publication of the Laws of the Old Colony; and by his appointment they were prepared for the press and edited by our esteemed associate who, in a preceding lecture of this course, has done justice to the legislation of that colony. The result of his labors appeared in a valuable and interesting volume entitled "The Compact, with the Charter and Laws of the Colony of New Plymouth." In 1855, a resolve was passed, approved by Governor Gardner, to publish the "Records of the Colony of New Plymouth;" which was executed by printing them in the same beautiful shape as the Massachusetts Records, during the period of the First Charter. The work was performed under the superintendence of the same editor, Dr. Shurtleff. They show in detail the proceedings of a community, of a comparatively small population, on a limited area, conducting its affairs wisely and justly. Its institutions were simple and unpretentious, and administered by enlightened men, with as righteous purposes and free a spirit as the world ever saw. But when we consider government, as branching out in the directions demanded by a people in the exigencies of an expanding growth, requiring complicated arrangements and functions to meet its wants, it is obvious that such an opportunity to develop it was not afforded in Plymouth as in Massachusetts. It was not, for instance, until 1640 that any thing like a House of Deputies appeared, representing towns in a General Assembly in the older colony. In such respects it fell in our rear, even in the order of time.

Rhode Island originally consisted of several plantations, conflicting with each other, and carrying their contentions to the notice of the mother country, thereby keeping their affairs more or less within its jurisdiction. Its first General Court, in which



towns were represented, was held in 1647. Nothing, however, can impair its glory, in having first planted and ever sacredly cherished the immortal principle of religious liberty.

What is now Connecticut consisted, for some time, of distinct jurisdictions. Their affairs, like those of Rhode Island, were dependent upon decisions looked for from the mother country; and finally, in 1665, they were consolidated, by the authority of the crown, extinguishing the colony of New Haven, into one government. The gallant rescue of the charter obtained at that time, from the grasp of Sir Edmund Andros, at Hartford in 1687, is justly regarded one of the most memorable incidents of American history. It continued in force to the time of the Revolution, and saved Connecticut from experiencing the fate to which Massachusetts was subjected, after the loss of its First Charter privileges, of a dependent province. It remained, in fact, the constitution of the State of Connecticut until 1818.

What are now Maine and New Hampshire were claimed by conflicting proprietors; a large part of the former, more or less, under a foreign jurisdiction, and both of them much of the time under that of Massachusetts.

As this colony was organized, and in full action, as a civil government, before the other New-England plantations; as it was central to them, to a great degree their common mother, and so much more populous than either, — its history is of larger significance and importance. In many instances, — indeed, for the most part, — they followed in its track and conformed to its practices.

New York was a Dutch dependency until 1664; and its first legislative Assembly was in 1683. New Jersey, Pennsylvania, Delaware, and the Carolinas were proprietary provinces. Maryland had a legislative Assembly in 1639; but remained a proprietary government. The early colonial condition of Virginia was much interrupted, and long in an unsettled state.

The records and memorials of all the colonies are, however, of great value, presenting many features worthy of study, and, in some particulars, severally having claims to special credit.

Massachusetts alone, was all along, for more than half a century, left unmolested to form a government, at her leisure, and as she saw fit. The Records that tell how she did it, possess, therefore, a value altogether unique. They exhibit precisely



what a student of political science needs to know, and what can nowhere else be found. I proceed to note a few of the stages in the progress of eliminating the elements, and shaping the forms, of an effective, natural, and well-adjusted social and political organization, narrated in them.

After admitting the people to the freedom and power of the company, the founders of Massachusetts applied themselves slowly and cautiously, but with decisive measures, to their work. For some time, the company, at its meetings, which were all called Courts, took the entire management of affairs, however trivial, into its own immediate hands, acting directly on all matters whatsoever relating to person or property. At their first meeting, the governor and assistants were invested with the necessary powers to execute orders and decisions. At the next meeting, a beadle, afterwards dignified with the title of marshal, was sworn in, whose duty it was to attend the governor and execute his commands; also to be present at the Court, to maintain and enforce respect for its authority. The character and functions of justices of the peace were conferred upon the governor, deputy governor, and six of the assistants. Constables were appointed in the principal settlements.

It soon became apparent, that it was impracticable for assemblies of the whole body of the freemen, or for the Governor and assistants at their monthly meetings, to attend to the multifarious matters constantly demanding adjudication, in settlements as yet without known laws or established customs, and separated from each other by pathless forests. Cases could not reach the Court, with all the evidence required to decide upon them justly; and the Court, therefore, had to go to the cases. Certain persons were appointed in several localities, with limited jurisdiction, "to end small causes," as they expressed it. The body of the freemen, in General Court assembled, having thus begun to part with a portion of their power, and entered upon the path that separates judicial from legislative functions, carefully felt their way along, creating local tribunals in the towns, establishing counties with courts of trial within them, and gradually developing a comprehensive system of judicature.

In 1630, certain persons, their number not always being twelve, were appointed by the General Court to find and report



to it the facts relating to particular cases, thus originating here the institution of a jury, as it has come down to us. The General Court continued, however, in most cases, to examine and decide matters directly. In 1635, grand juries were provided to present cases to the General Court.

The administration of estates, and the distribution of property, whether of testates or intestates, the General Court, for some time, kept in its own hands, heeding the law and practice in England, as far as it saw fit; but at a very early period, the policy was discussed, and finally carried into effect, of passing the whole business over to special functionaries. Probate officers were provided. Special care, however, was taken to divest this branch of the law of the ecclesiastical character given to it in the mother country. In arranging the judicial department, the General Court, consisting as it did, immediately or by representation, of the whole people, seems during the entire period of the First Charter, to have retained in its own hands an ultimate control. An appeal to its revising and final judgment was kept open from all tribunals and in all descriptions of cases. Although subsequent experience has shed great additional light upon the subject of the true position of the judiciary, the records, now under review, may well be studied, conveying, as they do, much pertinent instruction and matter for reflection.

As the plantations multiplied, and spread into the interior, it became inconvenient for the people to be fully present at the meetings of the General Court, and the transaction of business was embarrassed by an irregular and unreliable attendance. In 1632, the expedient was adopted of advising the appointment of two persons in each plantation to confer with the Governor and assistants, about the raising of a public stock. In 1634, it was made lawful for the freemen of the several settlements, to choose two or three of their number to attend the Court, to confer about public affairs generally, and to "have the full power and voices of all the said freemen derived to them for the making and establishing laws, granting lands," &c. The principle of representation was thus gradually introduced. All the plantations fell into the practice of appointing such delegates, who were called deputies. For a few years they sat with the assistants in the same room, the Governor or deputy governor presiding



over the joint body. It seems to have become the custom for the deputies, to vote separately from the assistants; and a concurrence of the votes of the two portions of the assembly was required to carry a measure. Finally, it was concluded to have them sit in different rooms; and the deputies were organized as a distinct house, choosing their own speaker. In this way a double legislature was established. The fact that it has been adopted in all our States, and in the United States government, would seem to prove that it is founded on sufficient reasons, and essential to good legislation. In this, as in all things else, where the practice established here resembled that of the mother country, the resemblance was not the result of a spirit of conformity, or in deference to authority from that quarter, but solely because, in the natural progress of events, it was found expedient.

At an early day the General Court parted with a very considerable portion of its sovereignty to the several plantations, together with the fee of the lands within the limits of the same, thereby calling into existence what has always been regarded one of the chief elements of our political civilization, — Towns. John Adams declared, that to them, in a great degree, was to be attributed the preparation of this people to engage in, and carry through, the conflict of the Revolution. They are the nurseries of freedom, schools of universal education in popular rights, and alone can fit a people to make, obey, and execute the laws. No country can take the true start, or secure reliable progress in political reform, without them; and there is no race so degraded, as not to be redeemed to a capacity for self-government, if trained by such an institution to the exercise of control over affairs, by local communities in distinct neighborhoods.

Similar arrangements had existed for centuries in the mother country; and to them can be traced the characteristics which have made the English people competent to uphold a constitutional government. The encroachment upon these small local jurisdictions, — by modern Parliamentary interference and the establishment of central commissions or bureaus, — is regarded as having already lowered the character of the population of the rural districts of the kingdom. Towns were the basis of what are called hundreds; and in different sections of England, at



different times, had different appellations, as *thorp*, now village, or hamlet; *burgh*, now borough; and *town*. The last, being probably the original name, was the prevalent one;<sup>1</sup> although when our fathers left England, it had become superseded, in some localities, by *ville*, and *parish*. But, under the latter designation, the institution had been perverted from its original character, which was purely secular, brought under the power of the Church, and made to receive an ecclesiastical impress.<sup>2</sup> The lawgivers of Massachusetts were too true to their British ancestry to call them *villes*, and their repugnance to associations, connected with the hierarchy at home, forbid their calling them *parishes*. They went back to the old Anglo-Saxon name. They made the jurisdiction of towns quite limited at first, gradually enlarging it, until it reached the dimensions still retained, embracing powers the most momentous, and constituting by far the greatest portion of what we feel to be the government under which we live.

When the public exigencies demanded it, a confederation of colonies was effected at the suggestion of the Connecticut plantations, but under the lead of Massachusetts. The entries contained in the Records on this subject, and the documents connected with its organization and operation, may be safely said to stand the test of comparison with the State papers of the originators of the Confederation of the Revolutionary age, and of the founders of our Federal Constitution, as showing the legitimate boundaries between the powers of separate States and of any general government that may be established among them.

The elements that give energy to a commonwealth, in peace or war, are strikingly disclosed and illustrated in the history of Massachusetts under the First Charter. A more efficient government for the preservation of order, security, and the common welfare, has never existed; and the rapidity with which the public resources were brought to bear in military movements, while it was repeated at the opening of the war of Independence, has never been surpassed, even in our day, which has witnessed

<sup>1</sup> A Restitution of Decayed Intelligence in Antiquities concerning our Nation, by Richard Verstigan, 1605, chap. ix. p. 295.

<sup>2</sup> The Parish, its Obligations and Powers; its officers and their duties, with illustrations of the practical workings of the institution in all secular affairs, by Toulmin Smith. London, 1854.



the uprising in their might of a great people to save the national life.

The early records of Massachusetts shed light upon all subjects that relate to the development of the moral as well as physical strength of a State, particularly the diffusion of knowledge, and of a public spirit ready to assume burdens and face danger; and to sacrifice ease, property, and life, for the common weal.

The promptitude, boldness, and impartiality of the internal administration of the government are particularly noticeable. Offences were rebuked and disorder suppressed by sure and decisive measures: no rank or station, no popular affection or habitual reverence for particular persons, however eminent or honored, could obstruct the course or embarrass the movements of even-handed power. The General Court, in the exercise of its sovereignty, treated all men alike, in as well as out of its own body. Sir Richard Saltonstall was fined; Endicott was admonished, disqualified temporarily for holding office, and committed for contempt of the authority and dignity of the Court; and even Winthrop, once in a while, was dropped from his high place.

In the administration of external affairs, the General Court was equally disregarding of all weak and timid considerations. Nothing can surpass the spirit, courage, ability, and success, with which it withstood, and repelled attempts of encroachment from the mother country.

There was always a powerful party busily at work in the Court at London, bent upon the suppression of the Massachusetts colony; but by skilful diplomacy on the part of the Court and its able agents in England, following the policy comprehended by Winthrop in two words, — "Avoid and protract;" by standing tenaciously and resolutely upon their charter, particularly that feature of it which left no opening for an appeal to the mother country, and provided no process by which complaints could legitimately be brought against the company; by the opportune diversion of attention from colonial matters to occurrences in England, especially those connected with the controversy between the King and Parliament; and by the blessing of Providence, — every blow was warded off, until two generations had laid the foundations of the political fabric too deep to be moved.



It became, indeed, quite early a general feeling, among sensible people in England, that it was about as well to let the unmanageable and spunky little colony alone.

Collier, in his "Ecclesiastical History of Great Britain," quotes at length the Order in Council Archbishop Laud issued, June 17, 1634, to all places of trade and plantation where the English were settled, enjoining the establishment of the national church in them, and remarks, that, while that order was extended to all the four great divisions of the world, and generally received and obeyed in all colonies and settlements, "New England was somewhat of an exception. The Dissenters," he continues, "who transported themselves thither, established their own fancy."

Charles II., however, was prevailed upon by the enemies of the colony to send over, in 1664, Commissioners to reduce it to subordination; but they went back as they came, disconcerted by the firmness and outgeneralled by the strategy of the colonial authorities. The records containing the communications that passed between these gentlemen and the General Court, show the wonderful sagacity, wariness, and ability of the latter. The royal commissioners were allowed to gain no advantage in the encounter, but were drawn into false positions and exposed attitudes by the expert fencing of their adversary, until they were utterly discomfited and disarmed. The whole affair, as we read its particulars, becomes absolutely amusing, from the superior wisdom and adroitness of the Court. Every attempt to bring the administration here under the control of the mother country, ended in equally humiliating failure.

It cannot, indeed, be doubted, that, if matters had come to extremities at any time, even at the earliest period, when the population scarcely reached up into the thousands, they would have resisted in arms any hostile force that should have ventured to land on their shores, from whatever quarter it might come; relying on the justness of their cause, and the Divine aid, on which they cast themselves with prayer and faith, as no other people ever did. Winthrop informs us, that in January, 1635, in the prevalence of an apprehension that a General Governor was about to be sent over from England, the Court asked the ministers, convened on the occasion, what ought to be done in that event? and they replied, with one voice, that he ought not to be



received. The fort at Castle Island was immediately built, and a large commission appointed, consisting of the principal inhabitants, of which Winthrop was at the head, for "military affairs," to organize and arm the whole strength of the country for either "offensive or defensive war." The idea was familiarly expressed by all, that they would no sooner relinquish their rights under the charter than their estates, that they would fight for both; and, if driven from their houses and lands on the seashore, they would withdraw deeper and deeper into the forests, carrying their charter, the ark of their covenant, with them. And finally, when James II. abrogated the charter and took ruthless possession of the country, with a design, as the colonial statesmen believed, in pursuance of a secret treaty, to cede it to France, the people of Boston and the vicinity rose in their wrath. Sir Edmund Andros found himself, the next morning, in the lock-up at Fort Hill. He was removed for safer keeping to Castle Island, which, by holding as a prisoner the deposed royal governor, fairly won a right to the title, subsequently given it, of Fort Independence. Finally, he was shipped back to England. In the mean time, old Simon Bradstreet, in his eighty-seventh year, who, fifty-nine years before came over with Winthrop, and was the first secretary and the last governor under the First Charter in Massachusetts, was recalled to his place by an insurgent people, and for three more years affairs were administered as in the days of the old charter. The bold procedure was acquiesced in at home and abroad, no one was called to account for it, and Andros got no redress. The First Charter history of Massachusetts thus closed in glory.

The study of these records will help us avoid errors into which the Fathers of Massachusetts were led. A large department of their legislation, that embracing sumptuary laws and police regulations, is now considered as passing beyond the boundaries of the legitimate power of government, and trenching upon the rights of private life, and the domain of personal freedom. The severities of their penal code are condemned by the sentiments of a more enlightened age; but, in reference to this point, allowance must be made for their circumstances. In the prevention and punishment of crime, they had not what we possess in philanthropic, reformatory, and penitentiary establishments.



In initiating and organizing a government, errors were committed, but they were readily rectified when discovered. In 1636 and 1637, the General Court was led into a measure singularly in conflict with its usual policy and the spirit of the people : a council for life was established, and Winthrop, Dudley, and Endicott elected to it. The prevalence of sounder views prevented any further proceedings, and the plan was dropped.

There is one branch of their administration exposed especially to stricture, and universally condemned, at the present day, which must not be overlooked ; for their views and designs in relation to it are proved to have been fallacious and impracticable. They came here with a purpose most dear to their hearts, of establishing and enjoying a system of society and government in which all would be of one mind, in the reception of a particular theological creed and ecclesiastical order. This did not, in their view, involve any violation of the rights of conscience. The New World, as they reasoned, could accommodate persons of all persuasions. They had purchased and planted their territory, and cherished the hope of enjoying it in peace and unity. This idea had captivated their imaginations. The agitations and dissensions arising from conflicting religious theories were distasteful to their feelings. They had left the Old World to get rid of them, and thought it no wrong to ask those who desired to establish and propagate opinions in conflict with theirs, as there was room enough for all, to go elsewhere. To preserve peace, tranquillity, and order, they undertook to keep out Anabaptists, Antinomians, and Quakers. It was an error to expect to succeed in such a policy, and the attempt involved them in the follies and mischiefs of intolerance and persecution. As followers of the divine Word, and disciples of the Great Teacher, they ought to have known better. Tares will spring up with the wheat. LET THEM BOTH GROW TOGETHER UNTIL THE HARVEST. The Lord of the harvest, and he alone, has the right or the power to separate them. In this, then, — it cannot too emphatically be affirmed, — the founders of Massachusetts were in the wrong, and their example is to be held up as a warning. For having pursued the opposite policy, in opening a shelter for all sorts of opinions, and patiently enduring the



turmoil of wrangling bigots and fanatical enthusiasts, rather than suffer the hand of the civil power to be lifted against them, the name of Roger Williams will be illustrious, and the peculiar honor of Rhode Island secure for ever.

At the very first meeting of the Massachusetts General Court, after the transfer of the charter, at which a governor and assistants were chosen, on the 18th of May, 1631, it was voted, that "no man shall be admitted to the freedom of this body-politic, but such as are members of some of the churches within the limits of the same;" and they suffered no churches to be gathered, but such as were sound in doctrine, according to the estimation of the General Court. Admitting that the policy announced in this vote was erroneous, and rejoicing, as we all do, that it has long ago been repudiated, it is but fair to give heed to what may be offered in its palliation. It was, in part, suggested by their peculiar situation. It was necessary, by all means, to keep their government from falling into the hands of persons who might appear among them with a disposition to win favor from the parties hostile to them around the royal court; and this seemed the most sure way to keep them out. Further, in spite of all precautions to prevent it, here, as in all first settlements, there were individuals of loose and profligate lives, wholly unfit to share in the government. It was an effectual bar against them. And, after all, it must be conceded, that there was one good feature in it. It ignored the distinction between high and low, rich and poor, bond and free; and was, as far as it went, in this view, a liberal measure. It is due to the Church, Catholic and Protestant, to give it the credit, in every age and every communion, whatever other barriers it has raised, of having welcomed to its bosom persons of all ranks and races, without reference to their position in the scale of society. It has been in advance of the State in this particular.

While we condemn the policy of the Fathers in reference to religious opinions, we must not charge them with having contemplated an established religion as a part of the frame of their government. To that they were utterly opposed. They often, it is true, sought the advice of the ministers concerning public affairs, appreciating their learning and wisdom, but never allowed them to participate in the government. They went further in



this respect than we do. No minister, or church officer of any kind, not even a lay-elder, was permitted to hold any legislative, political, or civil appointment.

Increase Nowell, an original patentee and assistant, belonging to a high family at home, who came over with the charter, was a man of eminent gifts and graces, and all his life in distinguished public employment. When the church at Charlestown was planted, he was chosen a ruling or lay elder, and acted as such. The question was raised, whether he, being a magistrate, could hold office in a church. It was decided that he could not, and Nowell laid down his eldership.

Samuel Sharp was probably one of the best educated men of the first age of the colony. Bred to learning during his youth, and transferred at opening manhood to business as a merchant, he continued through life to cultivate his mind and gratify his literary tastes. He seems to have been a proficient also in military knowledge, as he was intrusted, from the first, with all that related to engineering, fortification, and ordnance, in the plantation. Colonial enterprise seems to have particularly attracted his interest. He was one of the company in London which managed the first settlement at Plymouth. The Records of the Massachusetts Company show the active part he took in its affairs, and the extent to which it availed itself of his business efficiency. When Endicott was elected temporary local governor, April 30, 1629, he divided the vote with him, was appointed one of his council, and authorized, in conjunction with Samuel Skelton, the first pastor of the Salem church, in the event of Endicott's death, to assume the government of the plantation. Although Matthew Cradock never came to America in person, he took lands, and shipped over successive cargoes of provisions, live stock, and other needful articles, selecting suitable persons to look out for their disbursement and distribution. Sharp was his chief agent, and enjoyed his full confidence. Henry Haughton was also concerned in the management of Cradock's affairs. The latter, at the formation of the Salem church, was elected its lay-elder; but, dying a few months afterwards, Sharp was chosen to his place, which he filled to his death in 1656. In consequence of holding this office, the great talents and capacity of Elder Sharp were lost to the civil service of the colony. His name,



although consecrated by the memory of his various usefulness, Christian learning, and eminent piety, is seen no more on its records, except as having, with Endicott and others, been bound over to answer before the General Court, as representatives of the Salem church, for having denounced the proceedings of the Court against its minister, Roger Williams.

These instances sufficiently show how thoroughly the policy was carried out of not allowing any officers whatever of a church to hold political or civil appointments, or in any degree or shape to have share in the government.

The Fathers of Massachusetts have been ridiculed for the respect in which they held the Hebrew polity, and for bringing the authority of the Scriptures, particularly of the Old Testament, to corroborate their legislation. But it may be asked, Where else could they have gone? Not surely to precedents drawn from ancient despotisms, or European monarchies. References to the statutes of the Pentateuch were more to their purpose, and justly carried greater weight, than to feudal rolls of parliaments, basely obsequious to Tudors and Stuarts. The Hebrew government, for the ends it was designed to accomplish, was the most perfect ever contrived. It left a deeper imprint on national character than any government ever has. It gave to a people a national life which no power on earth has been able to extinguish. Subjugation, dispersion, and the scorn, hate, and persecution of all nations for two thousand years, have made no impression on it. The Jewish race has survived it all. In our day the proudest monarchs are bowing before its banking-houses, and it affords leading minds to parliaments and cabinets. Its perpetuity, as a distinct people, although scattered everywhere, and everywhere trodden down for ages, is the marvel of the world's history, and attests the greatness of Moses as a lawgiver.

The Massachusetts statesmen of the first age did not follow indiscriminately the details of the Jewish system; but, as the Records show, sought to discover and obey the requirements of eternal moral laws. They acted, in their secular administration, upon principles that will stand the test of all time; but found gratification and confirmation in the ancient Scriptures. It is wonderful to what an extent they were able to avail themselves of this resource. Any one who verifies, collates, and examines



their references to the events, characters, and expressions of Holy Writ, will be surprised to find how apposite they are, and what a mine was thus opened. Verily, the volume containing the most ancient literature of the world, is worthy of being called the Book of Books. Not wholly unaware of the disparagement, in which some have indulged, of the Old Testament scriptures, I am constrained to say, that the longer I live, and the more I ponder them, the profounder is my admiration and veneration of the unapproached dignity and simplicity of style of their historical and narrative passages, and of the beauty, splendor, and sublimity of the conceptions and imagery that glorify their strains of eloquence, poetry, and prophecy, breathing an influence that expands and lifts up the soul, and is felt to be inspiration.

In support of what I have said, in reference to the legislation of the first colonial age, allow me to fall back upon the judgment of one whose name is among the ornaments of the Massachusetts Historical Society, and the memory of whose genius and scholarship is fresh in the hearts of the older members. Francis Calley Gray, in a notice of the compendium, made in 1641, of the laws of the Massachusetts colony, known as the "Body of Liberties,"<sup>1</sup> says, —

"Our ancestors, instead of deducing all their laws from the Books of Moses, established, at the outset, a code of fundamental principles, which, taken as a whole, for wisdom, equity, adaptation to the wants of their community, and a liberality of sentiment superior to the age in which it was written, may fearlessly challenge comparison with any similar production, from Magna Charta itself, to the latest Bill of Rights that has been put forth in Europe or America."

The early lawgivers of Massachusetts were, indeed, in advance of their times. Before we ridicule or reproach their legislation, it becomes us to see to it that those whom we choose to make and administer law, are equally in advance of our times.

The just formation of a body-politic which these Records have now been used to illustrate, demands attention in our day. Much remains to be done, even in the most advanced and enlightened nations. Much is being done. All the light that can be obtained is needed. Men everywhere are crying out for it. Agita-

<sup>1</sup> Massachusetts Historical Collections, vol. viii. Third Series, p. 191.



tion and change rule the hour. The future is felt to be subject to unknown and indeterminable influences, and to depend upon the wills or fortunes or lives of individuals, or the fluctuating conflicts of parties. Who can predict what is in store for Spain; France, Italy, the German States, or the northern kingdoms of Europe? The current of events seems to be working radical changes in Great Britain and Ireland, and the dependencies of that empire. Although, in many respects the most advanced of the old forms of political civilization, it can hardly be doubted that it is doomed to pass through momentous crises; for the whole structure of its constitutional system rests upon fictions that must give way, sooner or later, to truth and right. It assumes that there are three estates essential to the composition of a nation,—king, lords, and commons. The last only has a legitimate and permanent existence. The people are the whole of a country, so far as its government is concerned, and must finally vindicate their rightful claim to power.

The framers of the Constitution of the United States are justly regarded as among the wisest statesmen of all times; but they failed, in some points, in contriving their scheme of government, to estimate aright the action of the principles of human nature, or calculate their forces. They did not foresee the operation or even the existence of what are called national parties. The arrangement they made for the election of a President was soon found utterly impracticable for the end designed. The Amendment of 1803, introducing the plan that has been subsequently followed, was only carried by the decision of the then Speaker of the House of Representatives, Nathaniel Macon, of North Carolina, who claimed the right, since conceded, of the presiding officer of that body, to vote when the House is not equally divided. His vote made the requisite two-thirds.

Indications are appearing that some further change may be demanded. The intermediate machinery of Electors is justly criticised; but great difficulty will be experienced, in contriving in any other way, to preserve the rights of the smaller States. So, also, on the elementary subject of suffrage, great enlargements have been recently made, but others are demanded. It is, indeed, evident that questions are impending that reach the foundations of political science. Let them be met, not with ridicule or



reproach, but with intelligence and fairness. Having been brought to a higher stand-point, with a wider field of view than the Fathers, we ought to have a more liberal spirit; but for integrity of purpose, and independence of authority, for carefulness in deliberation, and firmness and courage in action, we may well study their example.

Pardon me for detaining you a moment longer, while summarily delineating the spectacle the early records of Massachusetts present.

Here, on a clear field, unoccupied by any organized society, with no pre-existent institutions to cumber the ground, but all as fresh as if never trodden by man before, the experiment of planting and constructing a civil government was fairly worked out. No external power was suffered to interfere, and no foreign precedents allowed to claim authority; no closet statesman or fanciful theorist formed the scheme; no lordly proprietor, or distant corporation, or board of trade, directors, or officials of any kind, dictated. The whole procedure was left, without let or hindrance, suggestion or influence, from any outside quarter, to the people on the spot. They were a select people for the work; — intelligent, thoughtful, brave, and devout. They were settled in families, and comprised all the elements of a State. Although emigrants from the Old World, they trailed none of its arbitrary, outgrown institutions or usages after them. Conversant with all the learning of ancient and feudal forms, they applied none of it here. Having a new country to dwell in, they resolved to establish nothing but what facts, as they occurred, should prove to be necessary or desirable. Oglethorpe planned a social system for Georgia, John Locke drafted a contrivance of government for the Carolinas, Lord Baltimore superintended Maryland, William Penn Pennsylvania, and other proprietors and patrons their several settlements. Not so in Massachusetts: the Fathers of this colony followed no far-off light; they moved only as experience opened the way; they tried every step as they advanced, indulged in no theories or speculations, and held fast only what was found, in their view, to be good, and thus accomplished the great end of a stable, prosperous, powerful, and permanent commonwealth. All the essential features of our present security and happiness were stamped into the fabric of society during the period of the First Charter.



The early growth of Massachusetts was natural; and the matured result as complete, as of every natural growth; but, unlike the growths of nature in other things, there was, in this, no element of decay. The institutions planted during our first fifty years withstood a century of immediately subsequent provincial endurance; and as another century under the flag of our Union is approaching its completion, they are striking their roots deeper every day. The foundation here laid can never be moved; and we owe it to the men who laid it, that, in education, arts, wealth, and power, we hold a rank second to none in the Republic. The path, here opened, other Colonies and States have travelled, and all must travel, to reach the fruition of liberty, order, justice, and the rights of man.

Of the grand Epic, Time is writing, of the Regeneration of Nations, the old charter history of Massachusetts is the First Book.

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